

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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4           \_\_\_\_\_  
5           UNITED STATES OF AMERICA

6                               Plaintiff

7                       vs.           Criminal Action No. 01-06ERIE

8           DANIEL J. LEVETO

9                               Defendant  
10           \_\_\_\_\_

11                               PROCEEDINGS

12           Transcript of hearing commencing on Wednesday,  
13   October 20, 2004, United States District Court, Erie,  
14   Pennsylvania, before Honorable Maurice B. Cohill, Jr.,  
15   District Judge.

16   APPEARANCES:

17   For the Government:       For the Department of Justice  
18                               By: Rita Calvin, Esq.  
19                               By: Thomas Voracek, Esq.

20   For the Defendant:       Pro Se  
                              Stephen Misko, Esq.(Standby)  
                              (Via Telephone)

                              Reported by:  
                              Michael D. Powers, RMR  
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23 Proceedings recorded by mechanical stenography. Transcript  
produced by computer-aided transcription.

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1 P R O C E E D I N G S

2 (Court convened on Wednesday, October 20, 2004,

3 at 11:00 a.m in chambers.)

4 THE COURT: Mr. Misko.

5 MR. MISKO: Yes.

6 THE COURT: Okay. I've got the phone a little

7 closer to the table now than when we tested it so maybe I am

8 going to ask everybody to keep their voices up so that

9 Mr. Misko in Pittsburgh can hear us.

10 Mr. Misko, for the record, is the attorney that I

11 appointed as standby counsel for Mr. Leveto.

12 We're scheduled for a hearing on suppression on

13 Monday, and I just wondered, you know, how everybody stands

14 on this thing because we are planning on going to trial on

15 Tuesday.

16 Is the government ready to go?

17 MR. VORACEK: Your Honor, yes. Thomas Voracek and

18 Rita Calvin appearing for the Department of Justice.

19 We are ready to proceed with the suppression

20 hearing on Monday, October 25th, and with the trial on

21 Tuesday, October 26th.

22 THE COURT: How about you, Mr. Leveto?

23 MR. LEVETO: Your Honor, I am certainly ready to

24 proceed with the suppression hearing on Monday. And

25 depending on that, I will announce my intentions after that.

3

1 Okay?

2 THE COURT: You mean as far as a possible plea

3 goes?

4 MR. LEVETO: Yes.

5 THE COURT: You are considering a plea, is that

6 right?

7 MR. LEVETO: I'm considering a conditional plea,

8 yes.

9 THE COURT: Okay. Because we have got -- I mean,

10 if we are going to go to trial Tuesday, we have to alert  
11 jurors, tell them to call in Monday night, or whenever they  
12 call in Monday, whether they should report on Tuesday or not  
13 for duty.

14 So, I am not trying to put any pressure on you at  
15 all, but the sooner you can make up your mind on Monday, the  
16 better.

17 MR. LEVETO: Yes, sir. I understand that.

18 THE COURT: Now, you had also asked that the  
19 government produce certain witnesses for the suppression  
20 hearing, and you folks have seen that?

21 MR. VORACEK: Your Honor, the motion was filed, I  
22 believe, ex parte. The government did receive one, I think,  
23 probably by air from the Clerk's Office.

24 THE COURT: I think my law clerk sent that to you.

25 MR. VORACEK: But, we have reviewed that.

1 THE COURT: Do you have any problems with having  
2 any of these people there for the suppression hearing?

3 MR. VORACEK: We will have Agent Lapina present.

4 The group manager, Tom Demko will be present. The agent,

5 Richard Adams, will be present.

6 However, Mr. Leveto also requests a

7 Mr. Frank Falvo. We may have difficulty obtaining his

8 presence. He's an attorney with District Counsel's Office in

9 Pittsburgh, and he indicated to us that he does have Tax

10 Court on Monday.

11 Also, for the record, we note that Dr. Leveto has

12 requested that these witnesses bring documentation. Some of

13 the documentation concerns summonses. We have checked with

14 the agents. They will attempt to procure that by Monday, but

15 they can't guarantee that they will have it all by then.

16 Some of it's been archived.

17 THE COURT: I guess that is about the best we can

18 do from the sounds of it.

19 MR. LEVETO: I don't understand on -- my ex parte

20 motion was not supposed to be privy to everyone so this kind

21 of shocks me.

22 MRS. DAVIS: (Law Clerk) Judge, I did not send them

23 that.

24 THE COURT: Oh. Well, can't very well be ex parte

25 if they got to produce the witnesses.

1 MR. LEVETO: Well, if they need to produce them, or  
2 the Court, or however, see, I don't know how, with someone  
3 like myself that cannot afford to do it myself, who produces  
4 them.

5 I am of the opinion, or I was aware that the  
6 ex parte motion meant that I was not giving anything to the  
7 government regarding who my witnesses would be.

8 THE COURT: Well, the appropriate way would have  
9 been to ask to have it under seal. If you had asked for it  
10 under seal, then, you know, that would have alerted us not to  
11 tell them.

12 But, as a matter of procedure in a suppression  
13 hearing, even though the defendant is the one that's  
14 supplying or moving for suppression, the normal procedure,  
15 and it's been my experience all my legal career here, that  
16 the government produces these people that are going to be  
17 needed for the suppression hearing, and then they -- and they  
18 even start by examining the witness and then the defendant  
19 cross-examines that witness, but they are the kinds of

20 witnesses that you've got on your request for subpoena.

21 So, it shouldn't be any surprise to them whom you  
22 wanted.

23 MR. LEVETO: Absolutely. I agree with that,  
24 although Frank Falvo is a fairly important witness to me.

25 THE COURT: Is he an attorney?

6

1 MR. VORACEK: Yes, Your Honor.

2 THE COURT: Is there any attorney-client problem  
3 there?

4 MR. VORACEK: Your Honor, I am not certain of the  
5 answer to that.

6 And it's -- also from the Department of Justice's  
7 point of view, we don't actually represent our employees, IRS  
8 employees as individuals.

9 The other thing I would like to bring to the  
10 Court's attention, however, is, we've already provided  
11 Dr. Leveto with Jencks statements for Agent Lapina because we  
12 intended to call him in the suppression hearing and two other  
13 agents. We have not provided him with any Jencks material  
14 yet regarding Richard Adams or with any of the other two

15 witnesses.

16 We also note that some of the other documentation  
17 that Dr. Leveto requests regarding the summonses, the  
18 government doesn't feel that that's necessarily pertinent to  
19 the suppression hearing.

20 But, however, if the Court would order us to have  
21 that provided to Dr. Leveto, you know, so be it.

22 MR. LEVETO: Could I give my position on that?

23 THE COURT: Sure.

24 MR. LEVETO: Yes. The situation regarding --

25 THE COURT: Excuse me.

7

1 Mr. Misko, can you hear everything all right?

2 MR. MISKO: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. LEVETO: I believe, Your Honor, the information  
5 regarding summonses is absolutely critical here because, as I  
6 will attempt to show and when I do show that with those, that  
7 from day one we had an obvious Fourth Amendment violation.  
8 The onus will then be on how everything is not tainted from



9 that point on, irregardless of the generality of the warrant,

10 irregardless of the other arguments that will be made.

11 So, that's why I feel that information is very

12 germane to what's happening here, as well as my notification

13 ability under 7602, I believe it is, of my accountant on the

14 day of the search and seizure. These are very, very

15 pertinent issues when we think of suppression, not so much

16 exactly on the generality or the other points of the warrant,

17 but certainly a lot to do with, as is spoken of in

18 Alderman v. U.S., where one Fourth Amendment violation is

19 brought forth, the onus is then on the government to show how

20 everything is not tainted.

21 So, I believe the summonses --

22 THE COURT: What are the summonses all about? What

23 were the summonses for?

24 MR. LEVETO: Well, the summonses on the day of the

25 search and seizure was to my accountant.

8

1 THE COURT: For documents?

2 MR. LEVETO: Yes.

3 THE COURT: Okay.

4 MR. LEVETO: Yes.

5 THE COURT: Okay. And you want to see if the  
6 search exceeded the perimeter of the warrant or what?

7 MR. LEVETO: No. With that, I just would like to  
8 show, first of all, I wanted the proof of service to me of  
9 that summons, which I believe did not exist.

10 So, my rights -- at that time, there is a violation  
11 of rights there that I had no ability to quash the summons.  
12 Notwithstanding the fact of the coexistence of criminal  
13 process and civil process at exactly the same time, and one  
14 of the most severe of criminal processes also.

15 So that, in itself, is a very large issue here,  
16 very large issue.

17 THE COURT: And the summons came from what, a  
18 federal magistrate, or how does that work?

19 MR. VORACEK: Your Honor, I have not seen the  
20 summons. The IRS ordinarily issues summonses when they are  
21 involved in an administrative investigation for records.

22 THE COURT: You mean they can do it on their own  
23 like a subpoena?

24 MR. VORACEK: Yes. Correct, Your Honor. Your

25 Honor, again, though I don't really see the pertinence to the

9

1 motion to suppress that was filed by Dr. Leveto with regard  
2 to the summonses.

3 MR. LEVETO: Both in my initial motion to suppress,  
4 I included that information about the summonses, okay, as  
5 outrageous conduct. And in my response to your response, I  
6 enumerated the statutory violations in so doing that and to  
7 have the coexistence of criminal and civil process on the  
8 same date that the search warrant was executed.

9 This summons was administered by one of the agents  
10 and I don't know which one because, see, I never saw the  
11 summons. I never had the ability to quash it. So, the  
12 violation, both statutory as well as because 7209 and 7206  
13 are very, very explicit about criminal investigations, good  
14 faith, bad faith, and who is allowed to issue a third-party  
15 summons.

16 So, we have statutory as well as constitutional  
17 violations which absolutely play a part in this.

18 MR. VORACEK: Your Honor, if I may respond  
19 regarding procedure, at the time of the search warrant on

20 May 2nd, 1996, the Internal Revenue Service was still  
21 conducting an administrative investigation of Dr. Leveto. A  
22 Title 26 grand jury had not yet been initiated.  
23 Once a Title 26 grand jury begins, then the IRS is  
24 no longer able to have summonses. Then they go another route  
25 to procure documentation.

10

1 THE COURT: Through a judicial officer, or  
2 something?

3 MR. VORACEK: Yes. Right.

4 MR. LEVETO: Could I respond to that?

5 THE COURT: Sure.

6 MR. LEVETO: My position is that the coexistence of  
7 both of those, I am not saying that a search and seizure is  
8 equivalent of a Justice Department referral, but the Justice  
9 Department referral is the spirit of what faith that  
10 investigation and what route that investigation is taking.

11 That's by the wayside when you have the most severe  
12 of adverse criminal process being executed. It becomes  
13 almost a non-event to even think about, is it criminal or is

14 it administrative?

15 MR. VORACEK: At the time of the search and  
16 seizure, it defies common sense for someone to say that it is  
17 not a criminal investigation, and that's a very, very  
18 significant issue here.

19 MS. CALVIN: I would like to add one thing.

20 The Criminal Investigation Division, however, has  
21 summonses power. It is not only the civil arm of the IRS  
22 that has summonses power. Criminal Investigation has that up  
23 to the point in which --

24 THE COURT: Is a summons -- I mean, you will have  
25 to excuse my ignorance, but I have not got into this

11

1 aspect -- I had tax cases before, but not this aspect of it.

2 Is a summons from the IRS, is that different from a  
3 subpoena?

4 MR. VORACEK: Yes.

5 THE COURT: Or a search warrant? Is that different  
6 from a search warrant?

7 MR. VORACEK: Yes, Your Honor.

8 THE COURT: In other words, a summons, you are

9 telling the person to give me these papers, and a search  
10 warrant, they can go in themselves and look for them.

11 Would that be the difference?

12 MR. VORACEK: Yes. And it is my understanding in  
13 this case the summonses were issued to third-party record  
14 custodian for records.

15 THE COURT: Okay.

16 MS. CALVIN: Well, the search warrant also requires  
17 judicial review.

18 THE COURT: Yes. The search warrant, I would think  
19 would.

20 MS. CALVIN: Right.

21 MR. LEVETO: And, of course, the summons also  
22 requires notice to the third party in order to preserve their  
23 rights to quash.

24 In other words, that's why the information cannot  
25 be brought forth for twenty some days. Okay? That's why I

1 specifically asked for that notice to me because I did not  
2 get it, and for good reason.

3       If we look in Title 26, 7609, we find that one  
4 statute that authorizes the criminal investigator, or what  
5 you might allege the criminal investigator, to administer or  
6 execute summonses, you will find in one part that that whole  
7 statute is good for everyone, in examination, and revenue  
8 agents, but it does not apply to criminal investigators.

9       So, in other words, the authority to even  
10 administer third-party summonses, if they are criminal  
11 investigators as is alleged and is the law of this case now  
12 under 7608(b), we know what we are talking about there, that  
13 calls them criminal investigators, in that statute that  
14 allows or gives any authority for third-party summons, we  
15 will find that they are excluded as being authorized by that  
16 statute to do it.

17       THE COURT: Why do you need the summonses  
18 themselves to make that argument? I mean, I am sure they  
19 will agree that there were --

20       MR. VORACEK: Absolutely. The government  
21 stipulates that there were summonses issued.

22       THE COURT: If it's a stipulation of fact, I don't  
23 know why you need the summons itself. That's all I am  
24 saying.

25 MR. LEVETO: What I would like to have is a listing

13

1 of the summonses and the date because I am not so sure that  
2 that one that was done without my knowledge was the only one.

3 And, secondly, I really asked only for my  
4 acknowledgement that I was served as the law requires with  
5 that first summons. Okay? Because that first summons is  
6 very important with this criminal and civil process on the  
7 same date.

8 MR. VORACEK: Your Honor, the government, if so  
9 ordered by the Court, can make an attempt to obtain that.

10 THE COURT: I would attempt it or otherwise just  
11 get a declaration that the summons is not available, but that  
12 the summons was be served on such and such a date, or  
13 whatever happened, get some kind of an affidavit.

14 MR. LEVETO: I know it was certainly served on  
15 Mr. Scarpitti, my accountant.

16 THE COURT: There is a lawyer here named Scarpitti,  
17 too. Is he related?

18 MR. LEVETO: I don't really know, Your Honor.



19 THE COURT: So, I mean, it would seem to me that  
20 you can do that by stipulation of facts, you know, if he was  
21 or wasn't served. Then I would have to decide was that good  
22 or bad.

23 MR. LEVETO: Of course, the most important thing  
24 is, was I noticed, I think, because I did find out that he  
25 was served in April of 1997 was when I found it out. Okay?

14

1 I mean, I didn't know that he was served at all.

2 MR. VORACEK: If I may inquire, Your Honor, of  
3 Dr. Leveto? Are you specifically concerned with the summons  
4 issued to Mr. Scarpitti? Is that the only --

5 MR. LEVETO: I'm specifically concerned with my  
6 required notice of that summons.

7 MR. VORACEK: Of that summons?

8 MR. LEVETO: And I just wanted a list, okay? And,  
9 of course, 7602 says that anytime I really want a list, the  
10 secretary will provide me with that anyway of all the  
11 summonses.

12 So, I am not asking for anything unusual here.

13 THE COURT: Again, if an accountant is served, can

14 his client move to quash the thing?

15 MR. LEVETO: Yes. An accountant is a third party

16 under 7603. There is --

17 THE COURT: There is no -- it is not like an

18 attorney-client relationship with an accountant. I know

19 that.

20 MR. LEVETO: No, it is not that. And, of course,

21 this is the whole thing that makes civil process and criminal

22 process so much different, which brings us back to violations

23 which go from statutory also to constitutional when we look

24 at the coexistence, which these two things really can't

25 coexist in the same exact time period. That's a very

15

1 important issue.

2 So, I just want the tools to bring that issue out.

3 The tools to bring that out are very important.

4 THE COURT: Well, I would just ask the government

5 to do your best to get that stuff rounded up by Monday.

6 MR. VORACEK: Yes, Your Honor.

7 MS. CALVIN: Yes, we will.

8 THE COURT: Can we do anything else today that you

9 can think of?

10 MR. VORACEK: Your Honor, the government would just

11 like to put a couple things on the record concerning the

12 trial that's to begin on Tuesday.

13 We've already provided Dr. Leveto with all of the

14 Jencks material for the government's witnesses. The

15 government anticipates calling about fifteen witnesses.

16 We'll have about four hundred exhibits. Many of them are

17 voluminous documentation.

18 At the end of the government's case, we intend to

19 put a summary witness on the witness stand who will be

20 present during the trial who will provide summaries of the

21 voluminous documentation for the jury's understanding of the

22 case.

23 There is one aspect of Giglio that has not been

24 turned over to Dr. Leveto at this time. We would ask the

25 Court to unseal Margaret Leveto's plea agreement so we may

16

1 turn that over to Dr. Leveto as part of Giglio information.

2 THE COURT: We will direct that that be unsealed.

3 We will get that to you today, I imagine.

4 MR. VORACEK: And we have also just received a copy  
5 of Margaret Leveto's plea colloquy and we will turn that over  
6 to Dr. Leveto immediately.

7 THE COURT: Okay. I guess we'll have to deliver --  
8 well maybe -- why don't you get Rich to get that thing right  
9 now, Kathleen?

10 MRS. DAVIS: (Law Clerk) Okay.

11 THE COURT: Then we can give it to him before he  
12 leaves.

13 MR. LEVETO: Yes. I had no idea there was going to  
14 be any status conference, or anything, today or I may have  
15 had other things.

16 THE COURT: I didn't know there was going to be  
17 either until we got this and I thought we better find out  
18 about the people you want, and so forth.

19 I am just trying to think of anything else.

20 MR. LEVETO: I have a question, Your Honor. I  
21 mean, it doesn't take a rocket scientist to see that, as I  
22 sit here and we make plans for trial, I have to wonder if the  
23 decision is not already made on my suppression motion.

24 THE COURT: No.

25 MR. LEVETO: But, regardless of that, I have to say

17

1 that if I would like to enter an agreement, okay, or if I  
2 would like to change my plea, will I be able to, at that  
3 time, like with an oral motion to the Court, do that without  
4 being pressured into having to do anything at that time?

5 THE COURT: Prior to trial?

6 MR. LEVETO: Yes.

7 THE COURT: I mean, it would seem to me that you  
8 probably would not get credit -- you get usually a two-point  
9 reduction for a plea in the guidelines, as opposed to going  
10 to trial. You get some credit for saving the government the  
11 effort of going to trial.

12 Now, if you do it, you know, the way this thing is  
13 working out, I certainly would give you the credit for the  
14 two-point reduction if it were done before trial. But, if we  
15 have got our jury put together and ready to go and we're  
16 paying them \$40.00 a day for a hundred people to come in  
17 here, and from which I suppose we need four alternates with  
18 this long of a trial maybe, I don't know, but, anyway, the

19 government would be spending a lot of money after tomorrow if  
20 there is going to be a trial.

21 MR. LEVETO: Well, I have -- it's been no secret,  
22 but evidently it's got to be official and on the record, I  
23 will not go to trial with this case. Okay?

24 My plea, though, that I would be looking at  
25 changing my plea to, would be a conditional plea of nolo

18

1 contendere.

2 THE COURT: I think I would accept that because  
3 that avoids possible civil liability probably.

4 MR. LEVETO: Well, in my world, the reason I'm  
5 doing it is, it more closely matches myself and my integrity.  
6 Okay?

7 THE COURT: I would have to ask these folks -- give  
8 these folks an opportunity to oppose that, if they were so  
9 inclined, and maybe they have got to talk to people about it.

10 MR. VORACEK: Your Honor, the Department of Justice  
11 has a policy that the government opposes nolo contendere  
12 pleas.

13 We've also been involved in plea negotiations,  
14 though, with Dr. Leveto concerning a written plea agreement.  
15 And maybe we just better put it on the record though that the  
16 plea agreement, if one is -- if we are able to reach one,  
17 let's say, Monday afternoon with Dr. Leveto, a plea agreement  
18 would have to be approved by the Department of Justice  
19 person, our bosses, and also probably by the U.S. Attorney.

20 Logistically, I don't think that that's possible to  
21 do in one afternoon, on Monday afternoon, if the trial is  
22 scheduled for Tuesday morning.

23 THE COURT: As far as I am concerned, I mean, if  
24 that -- in that case, it would result in postponing the,  
25 quote, trial date. It doesn't sound like we are going to

19

1 have a trial, as a practical matter. It is going to screw up  
2 my schedule considerably if there would be a trial later on.

3 I mean, my schedule got this thing cut out for  
4 starting Tuesday and, you know, I am only up here every other  
5 month and I've got a full docket for months ahead on this  
6 thing. And so I would be willing to postpone the thing  
7 until -- assuming you would be able to get -- I would assume

8 you would be able to get permission to accept this

9 whatever --

10 MR. VORACEK: Your Honor --

11 MR. LEVETO: Your Honor, one other point. I can

12 tell you now unequivocally that I will not be going to trial.

13 Now, rather, the plea agreement I enter into in my

14 change of plea is with the government, okay, or if it is an

15 open plea. Okay.

16 THE COURT: I am not sure what you mean by that.

17 MR. LEVETO: Pleading without a deal. Basically,

18 pleading -- you know, I thought it was called an open plea.

19 I could be wrong.

20 MR. VORACEK: Your Honor, if I may inquire of

21 Dr. Leveto?

22 THE COURT: Yes.

23 MR. VORACEK: Are you considering to just pleading

24 guilty to the indictment or a nolo contendere to the

25 indictment?

1 MR. LEVETO: Right. Right.



2 MR. VORACEK: A nolo contendere to the indictment?

3 MR. LEVETO: Well, if I'm pleading, that's surely  
4 what I am doing. It's just that if I'm going to do it under  
5 the tutelage of the government versus -- I can tell you that  
6 there will be a change in plea and there will not be trial.

7 I think its important -- I think it's important  
8 obviously for your knowledge, too, and I am not -- and I have  
9 had this position for a while and it is not that I shared it  
10 with the Court a lot, but I have had it here and there and  
11 some reasons make me go to that, and we don't need to get  
12 into those now, but I can at least say that and be absolutely  
13 on the record for that.

14 THE COURT: And I am going to have -- I would have  
15 to think through, if they are opposing a nolo contendere  
16 plea, and I am not sure whether nolo contendere would work.

17 I mean, the literal translation of nolo contendere  
18 is, you know, I am not contesting the charge. I am not  
19 saying I am guilty or not guilty, but I am not going to  
20 contest it.

21 But, I am not sure if you can have a conditional  
22 nolo contendere plea.

23 MR. LEVETO: By the rules, you can, Your Honor.

24 THE COURT: You can?

25 MR. LEVETO: Yes. But, it may not apply to a

21

1 two-point reduction.

2 MR. VORACEK: Rule 11(a)(2) reads:

3 A conditional plea. With the consent of the Court  
4 and the government, a defendant may enter a conditional plea  
5 of guilty or nolo contendere.

6 THE COURT: So, when they say permission, that  
7 sounds like you have veto power.

8 MR. LEVETO: I think the permission is along the  
9 conditional plea line. I think it is still up to the Court,  
10 as far as guilty or nolo. If you read the notes to Rule 11,  
11 I think that sets that out because the government has to  
12 agree that if this motion was found to be in my favor, that  
13 it would dispose of the case.

14 THE COURT: But, I don't think the rules even talk  
15 about a conditional plea. That's just something that have  
16 been carved out of all the rules.

17 MR. VORACEK: Yes, Your Honor, it is somewhat of a,

18 quote, odd situation.

19 I know that Courts obviously can accept a nolo  
20 contendere plea over the government's objection by policy.

21 With regard to the conditional aspect, though, I  
22 believe that the government will have to check with our  
23 superiors on that precise issue.

24 THE COURT: All right. Well then, I think we ought  
25 to plan on the other -- well, I mean, I am taking

22

1 Mr. Leveto -- Dr. Leveto -- I am sorry. I don't mean to  
2 demean the fact that you are a doctor.

3 MR. LEVETO: That is okay, Your Honor.

4 THE COURT: In view of the fact that his action --  
5 he's told us that there is not going to be a trial, I'm -- I  
6 would be willing to postpone the suppression thing a day or  
7 two if that would help round it up. I would rather get it  
8 done on Monday, but if it would be helpful to postpone the  
9 thing for a couple days, why, I could do that, too.

10 MR. VORACEK: That's appropriate for the  
11 government, Your Honor. That would work.

12 THE COURT: Why don't you get Rich to come in,

13 Kathleen, and we'll see what --

14 MRS. DAVIS: (Law Clerk) Okay. He may be down --

15 THE COURT: He's my scheduler.

16 MRS. DAVIS: (Law Clerk) I know we are here on

17 Tuesday and Wednesday for other suppression hearings.

18 THE COURT: We are on the --

19 MS. CALVIN: While he is checking, even though we

20 did have representations from Dr. Leveto that he did intend

21 to plead, the government had an obligation to continue with

22 preparation, and so I have with me the government's requested

23 charge, as well as the proposed voir dire questions.

24 I have a copy for Dr. Leveto, as well, and I would

25 like to put on the record that we also have the plea colloquy

23

1 from Mrs. Leveto's plea, as well, as she provided testimony

2 at a civil hearing which has been provided to us, and I would

3 like to provide those to Dr. Leveto at this time.

4 MR. LEVETO: Was that August 13th, the civil

5 hearing? Is that the one that you are talking about?

6 2001 -- 2004. It was very recent.

7 MS. CALVIN: 2004. It was very recent. In fact,

8 my copy doesn't have a date on it, but I -- September 24th.

9 MR. LEVETO: Okay.

10 MS. CALVIN: And I would like to present these to

11 Dr. Leveto at this time. I don't know if he's allowed to

12 have them.

13 THE MARSHAL: I will take care of that later.

14 MS. CALVIN: And I have the originals for the Court

15 of the voir dire and the requested charge.

16 THE COURT: Yes.

17 MS. CALVIN: I have a copy for defense counsel --

18 standby counsel, which I will put in the mail.

19 THE COURT: Oh, okay. This is the plea letter that

20 Rich just brought in that was under seal and I'm presenting

21 that to you. That's a letter addressed to Mr. Mead, one of

22 our Assistant U.S. Attorney's. I don't know who presented

23 it.

24 MR. VORACEK: Your Honor, I believe Mr. Mead, at

25 that time, was representing Margaret Leveto.

1 THE COURT: Oh, okay. Mr. Mead used to be an

2 Assistant U.S. Attorney, yes.

3 Now, Rich -- I think you can go off the record.

4 (Off the record discussion.)

5 THE COURT: Okay. Well, then we'll, based on our  
6 conversation off the record, we'll say that the suppression  
7 hearing will be scheduled for 9:30 on Thursday, whatever that  
8 date is. I guess the twenty-eighth.

9 MR. VORACEK: Yes, Your Honor.

10 MR. WITAS: (Judge's Clerk) Judge, I am looking at  
11 the book right now. I don't know if this will have  
12 anything -- but there is a Judge's meeting at the ACBA  
13 litigation, lunch, Duquesne Club. Does that ring a bell?

14 THE COURT: I don't need to go to that.

15 MR. LEVETO: How about Mr. Misko?

16 THE COURT: Mr. Misko?

17 MR. MISKO: Yes, Your Honor.

18 THE COURT: How are you for next Thursday, a week  
19 from tomorrow?

20 MR. MISKO: Actually, I had something that day, but  
21 I am not going to -- I can rearrange it.

22 THE COURT: I'm appreciate that, if you can.

23 MR. MISKO: Yes, sir:

24 MR. WITAS: (Judge's Clerk) That will be the

25 twenty-eighth.

25

1 THE COURT: The twenty-eighth at nine-thirty.

2 Okay.

3 Do we have any other business to conduct today?

4 Does he have everything now that he has asked for,

5 that we can provide the stuff that was under seal and

6 anything else?

7 MR. VORACEK: Your Honor, will there be another

8 setting of a trial date or will that just be delayed?

9 THE COURT: I am taking Dr. Leveto at his word that

10 there will not be a trial.

11 MR. LEVETO: You can absolutely do that, Your

12 Honor.

13 MR. VORACEK: So, the government will not have

14 their witnesses for trial right after the suppression

15 hearing?

16 THE COURT: Right.

17 MR. VORACEK: Very good. Thank you.

18 MR. LEVETO: You won't need them anyway. That is  
19 fine. Thank you.

20 THE COURT: All right. Well, thanks very much. It  
21 sounds like we'll get this thing resolved then, one way or  
22 another, in the near future.

23 MR. VORACEK: Yes, Your Honor.

24 MR. LEVETO: Yes, Your Honor. Thank you.

25 MS. CALVIN: Thank you, Your Honor.

26

1 THE COURT: Okay. Steve, thank you very much.

2 MR. MISKO: Okay, Judge. Take care. We'll see you  
3 next week.

4 THE COURT: Okay.

5 (Court adjourned on Wednesday, October 20, 2004,  
6 at 11:35 a.m. in chambers.)

7

8 \* \* \* \* \*

9 I certify that the forgoing is a correct transcript  
10 from the record of proceedings in the above-entitled matter.

11



12 S/Michael D. Powers

Michael D. Powers

13 Official Reporter

14 \*\*\*\*\*NOT CERTIFIED WITHOUT ORIGINAL SIGNATURE\*\*\*\*\*

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